



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2900 FAX (603) 271-2456



May 22, 2002

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Claude and Constance d'Anjou
Cherokee Construction Co., Inc.
11 Portage Road
Goffstown, NH 03045

Re: Administrative Order No. WMD 02-12

Dear Mr. and Mrs. d'Anjou,

Enclosed is Administrative Order No. WMD 02-12 issued this date to you as a result of inspections conducted on March 12, 2002, March 15, 2002, and March 29, 2002.

Should you have any questions regarding this order, please contact George Carrigan or me at 271-3899.

Sincerely,

Kenneth W. Marschner, Administrator
Waste Management Programs
Department of Environmental Services

CERTIFIED MAIL/RR # : 7099 3400 0002 9769 7457

cc: Gretchen Rule, DES Legal Unit
Public Information Coordinator, DES PIC Office
Jennifer Patterson, Sr. Assistant Attorney General
Town of Goffstown
Hillsborough County Registry of Deeds



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2900 FAX (603) 271-2456



Cherokee Construction Co., Inc
11 Portage Road
Goffstown, NH 03045

Claude and Constance d'Anjou
11 Portage Road
Goffstown, NH 03045

**ADMINISTRATIVE ORDER
No. WMD 02-12**

May 22, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Cherokee Construction Co., Inc., and Claude and Constance d'Anjou pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Cherokee Construction Co., Inc. ("Cherokee") is a New Hampshire corporation having a mailing address of 11 Portage Road, Goffstown, NH 03045.
3. Claude and Constance d'Anjou are individuals having a mailing address of 11 Portage Road, Goffstown, NH 03045.

C. STATEMENTS OF FACTS AND LAW

1. RSA 149-M authorizes DES to regulate the management of solid waste in the State of New Hampshire. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement solid waste management standards. Pursuant to this authority, the Commissioner has adopted Env-Wm 100-300 and Env-Wm 2100-3700 ("Solid Waste Rules").
2. Claude and Constance d'Anjou are the owners of land at 11 Portage Road, Goffstown, NH, more particularly described in a deed recorded in the Hillsborough County Registry of Deeds at Book 5240, Page 1941, and identified on Goffstown Tax Map 11 as Lot 22 (the "Site")
3. Claude d'Anjou is the President of Cherokee Construction Co., Inc.
4. On December 21, 2001, DES personnel received a complaint from the Town of Goffstown regarding unpermitted solid waste activities at the Site.

5. On March 12, 2002, DES personnel investigated the complaint by conducting an inspection of the Site. The purpose of the inspection was to determine Cherokee Construction Co., Inc., and Claude and Constance d'Anjou's compliance status relative to RSA 149-M and the Solid Waste Rules.

6. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

7. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

8. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."

9. During the March 12 inspection, DES personnel observed waste consisting of construction and demolition debris, tires, scrap metal, sewer pipe, glass, plastic, rebar, wire mesh, dry wall, and painted wood at the Site. Some of the waste was partially buried and some of the waste was located adjacent to a wetland area.

10. The construction and demolition debris, tires, scrap metal, sewer pipe, glass, plastic, rebar, wire mesh, dry wall, and painted wood observed by DES personnel at the Site are solid wastes as defined by RSA 149-M:4, XXII.

11. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

12. The Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX.

13. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a [solid waste] facility."

14. Claude and Constance d'Anjou are the owners of a solid waste facility.

15. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

16. A review of DES files show that neither Cherokee Construction Co., Inc., Claude d'Anjou, nor Constance d'Anjou has applied for or holds a permit to operate a solid waste facility at the Site or any New Hampshire location.

17. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or dispose of solid waste at, any facility other than an approved [solid waste] facility."

18. On March 15, 2002, DES personnel conducted a follow-up inspection of the Site. During the March 15 inspection, DES personnel determined that test pitting and soil analysis were necessary to determine the extent of solid waste burial at the Site.

19. On March 29, 2002, DES personnel conducted a second follow-up inspection of the Site. Test pits were dug by Mr. d'Anjou. DES personnel learned from Mr. d'Anjou that he had transported solid waste to the Site with the intent to use it as fill material. DES personnel observed the following in each of the test pits (see attached map for test-pit locations):

Test Pit #1 Scattered pieces of construction and demolition debris, and scrap metal. This waste was brought on-site by another contractor.

Test Pit #2 Roofing material, and construction and construction and demolition debris. This waste was brought on-site by Mr. d'Anjou.

Test Pit #3: Construction and demolition debris, siding, plastic, ceramic pottery, and an aluminum can.

Test Pit #4 Bricks, mortar, and concrete.

Test Pit #5 Concrete, bricks, plastic fencing, and an old electrical device.

20. Mr. d'Anjou transported solid waste to and disposed of solid waste at an unpermitted solid waste facility.

21. RSA 149-M:9, VI states that "No person shall operate a public or private facility who is not certified by [DES]."

22. A review of DES files shows that neither Claude d'Anjou nor Constance d'Anjou hold a solid waste facility operator certification.

D. DETERMINATION OF VIOLATIONS

1. Cherokee, and Claude and Constance d'Anjou have violated RSA 149-M:9, I by operating a solid waste facility without first obtaining a permit from DES.

2. Cherokee, and Claude and Constance d'Anjou have violated RSA 149-M:9, II by transporting solid waste to an unpermitted solid waste facility.

3. Cherokee, and Claude and Constance d'Anjou have violated RSA 149-M;9, II by disposing of solid waste at an unpermitted solid waste facility.
4. Cherokee, and Claude and Constance d'Anjou have violated RSA 149-M;9, VI by failing to obtain a solid waste facility operator certification.

E. ORDER

Based on the above findings, DES hereby orders Cherokee, and Claude and Constance d'Anjou as follows:

1. **Immediately** cease operating an unpermitted solid waste facility.
2. **Immediately** cease transporting solid waste to an unpermitted facility.
3. **Immediately** cease disposing of solid waste at an unpermitted facility.
4. **Within 30 days** of this Order, submit to DES for approval a Scope of Work for the removal of all solid waste at the Site. Include as part of the Scope of Work a schedule which details when the work will be done.
5. Upon DES approval of the Scope of Work and proposed schedule, implement the Scope of Work as approved and complete the removal of all solid waste at the Site to a facility or facilities permitted to accept such wastes in accordance with the approved schedule.
6. Submit one written status report to DES **within 7 calendar days** of completing the approved Scope of Work certifying that corrective measures have been implemented in accordance with the approved Scope of Work and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts**.
7. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

George Carrigan, Waste Management Specialist
DES Waste Management Division
6 Hazen Drive
Concord, NH 03301
Fax: (603) 271-2456
e-mail: gcarrigan@des.state.nh.us

F. APPEAL


Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order


does not automatically relieve Cherokee, and Claude and Constance d'Anjou of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against you, including referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. DES reserves the right to pursue administrative penalties for the violations noted above.

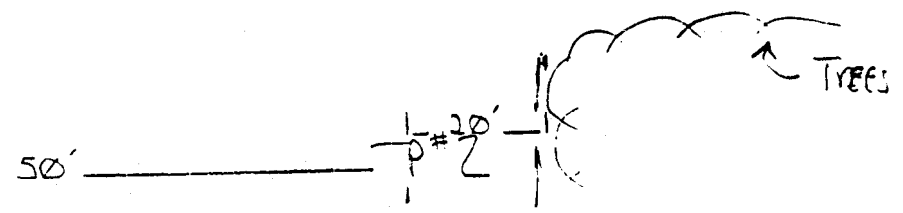
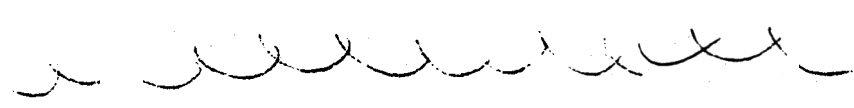
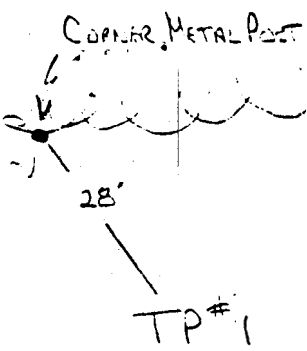
This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.


Philip J. O'Brien, Ph.D., Director
Waste Management Division

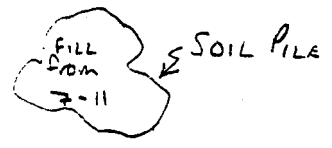
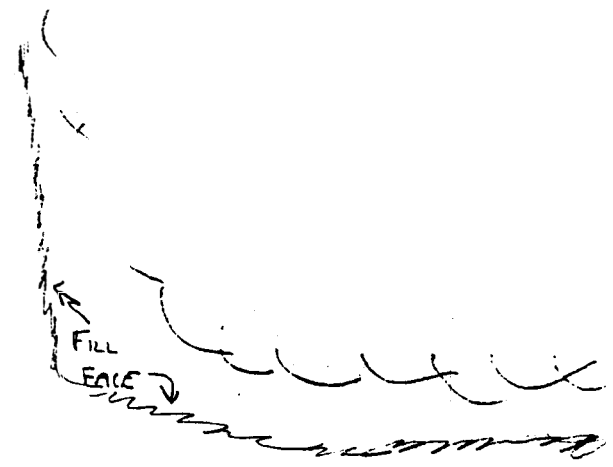
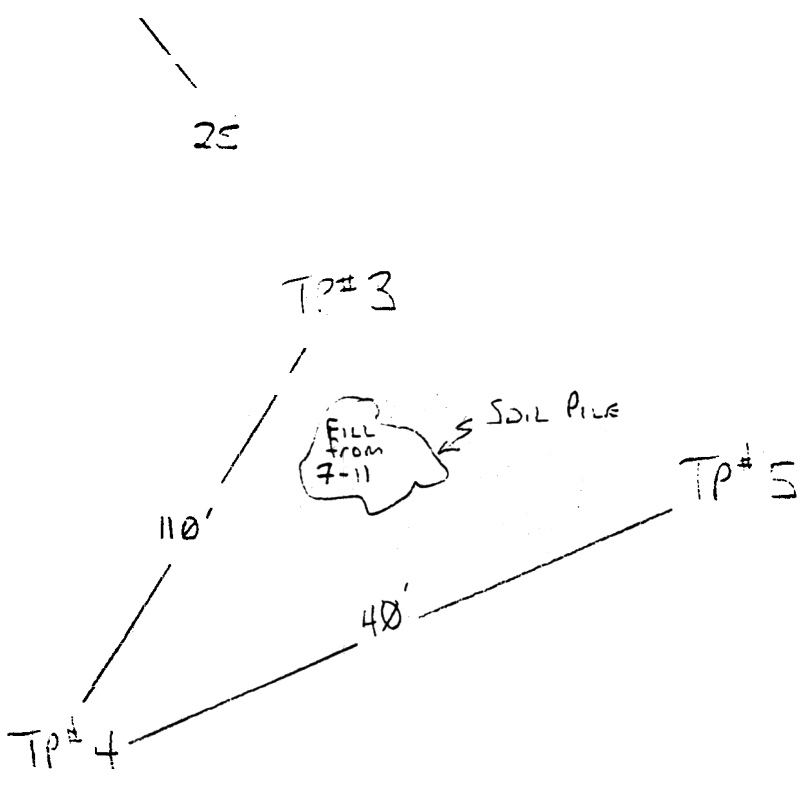

Jana Bisbee, Acting Comm

Certified Mail/RRR: 7099 3400 0002 9769 7457

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIC Office
Jennifer Patterson, Sr. Assistant Attorney General
Town of Goffstown
Hillsborough County Registry of Deeds



NOTE NOT TO SCALE!



SITE MAP showing Test Pt (TP) Locations.

D'ANGELO SITE
11 PORTAGE AVE
GROFFSTOWN, NH

SWC 01-61
29 MAR 02

DRIVEWAY —————> To house

